

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Applications of AT&amp;T Inc. and</b>	)	<b>WT Docket No. 11-65</b>
<b>Deutsche Telekom AG</b>	)	
	)	
<b>For Consent to Assign or Transfer Control of</b>	)	
<b>Licenses and Authorizations</b>	)	

**REPLY COMMENTS OF DIGITAL LIBERTY  
AMERICANS FOR TAX REFORM**

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## **I. Summary of Comments**

Digital Liberty, a project of Americans for Tax Reform, respectfully submits these comments in the Commission's proceeding listed above on the merger and transfer of licenses between AT&T and T-Mobile.

We urge the Commission to focus on the true nature of the highly competitive wireless market. Myopic calls to view competition simply as the number of carriers or their market share, particularly in select product markets, ignore more accurate metrics. The wireless market is characterized by significant downward pressure on prices of both voice and data services and strong competition to provide technology and services that consumers demand – all despite recent a string of mergers over the past decade. Further, we urge the Commission to avoid burdensome regulations as a condition for merger approval that will pick multiple winners and one loser in the market while setting a precedent for further regulatory action against other carriers.

## **II. The Wireless Market is and Will Remain Competitive Following The Merger**

Commenters urging the Commission to deny the merger argue that it will create a “duopoly” and reduce competition in very select product markets. For example, Free Press focuses on the “national market for postpaid smartphone services,” arguing that with fewer major carriers, the merger will “decrease competition and raise serious anti-trust concerns.”<sup>1</sup> These are tired claims that rely on a myopic view of the wireless market and the nature of competition more generally.

Competition is not a simple metric of the number of market actors, but rather – as the Austrian economist Friedrich A. Hayek described it – a “discovery procedure.”<sup>2</sup> Businesses

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<sup>1</sup> Free Press Petition to Deny, on Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations (WT Docket No. 11-65), May 31, 2011, pg. 2.

<sup>2</sup> Hayek, Friedrich A., *Competition as a Discovery Procedure*, trans. Marcellus S. Snow, The Quarterly Journal of Austrian Economics (Vol. 5, No. 3), Fall 2002, pg. 9-23.  
<[https://mises.org/journals/qjae/pdf/qjae5\\_3\\_3.pdf](https://mises.org/journals/qjae/pdf/qjae5_3_3.pdf)>

attempt to determine what goods and services consumers demand at what price and proactively jostle to cater to demands more effectively than their competitors.

The past decade has seen concentration and restructuring in the wireless market – something merger opponents are correct in pointing out. But by every other metric, rigorous competition is certainly meeting consumer demands. Most telling is the fact that 96 percent of Americans have adopted wireless up from 38 percent in 2000, despite 5 major mergers during that time.<sup>3</sup> The wireless market is now outgrowing legacy voice services so strongly that the percentage of Americans going wireless only has tripled in the past five years to over a quarter of subscribers.<sup>4</sup>

The following sections aim to paint a comprehensive picture of the current competitive wireless market.

#### **A. History Shows Consumer Price Declines Occur Irrespective of Mergers**

Free Press claims that “prices will likely rise” as a result of the merger, despite strong precedent showing otherwise.<sup>5</sup> A Government Accountability Office report from last year acknowledged “industry consolidation” with 5 mergers in the past decade, yet also found “generally lower prices, which are approximately 50 percent less than 1999 prices.”<sup>6</sup> The Commission itself has also acknowledged “there is ample evidence of a sharp decline in mobile wireless prices in the period since the launch of PCS service.”<sup>7</sup>

Competitive price wars exist wholly independent of the number of market actors, a prime example of which can be found in the Commission’s own 2010 Wireless Competition Report:

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<sup>3</sup> CTIA, “U.S. Wireless Quick Facts,” <[http://ctia.org/consumer\\_info/index.cfm/AID/10323](http://ctia.org/consumer_info/index.cfm/AID/10323)>; Five major mergers noted are Verizon-Alltel, Sprint-Nextel, Cingular-AT&T, SBC-BellSouth, and Bell Atlantic-GTE.

<sup>4</sup> CTIA, *Ibid.*

<sup>5</sup> Free Press Petition to Deny, pg. 2.

<sup>6</sup> Government Accountability Office, “Enhanced Data Collection Could Help FCC Better Monitor Competition in the Wireless Industry,” July 2010.

<sup>7</sup> Federal Communications Commission, “Fourteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services,” May 20, 2010. Pg. 109, Para. 185.

“In January 2010, Verizon Wireless reduced the prices of its unlimited voice plans for both individual and shared family offerings. Later the same day, AT&T responded to Verizon Wireless’s changes with matching price reductions on its unlimited voice plans.”<sup>8</sup>

An increasingly large subset of wireless service is data. Wireless consumers used almost three times more data last year than in 2009, and data usage is expected to grow 26-fold by 2015.<sup>9</sup> Yet, like the price of voice, the price of data is also declining substantially. The price per megabyte declined by 89 percent between late 2008 and late 2010.<sup>10</sup> Compare this with fixed broadband connections, where prices declined by 50 percent per megabyte in roughly the same time period.<sup>11</sup> A tighter timeline shows that in the past year alone, data usage jumped by 89 percent while per megabyte data prices fell by 46 percent.<sup>12</sup>

It is also unlikely that the merged company would engage in price hikes on roaming or backhaul services. Despite an arguable lack of legal authority, the Commission this year enacted data roaming price controls that follow the 2007 voice roaming regulations.<sup>13</sup> Additionally, T-Mobile does not sell backhaul services, so the merger would only free infrastructure to expand current backhaul offerings.

## **B. Carriers Will Continue to Compete on Technology and Spectrum**

AT&T suffers from capacity constraints and is behind Verizon in deploying 4G wireless broadband. The merger will allow AT&T to utilize T-Mobile’s current HSPA+ broadband spectrum, cell sites, and other infrastructure to enhance and expand current 3G services, both in rural areas where build-out is lower and in urban areas where broadband demand

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<sup>8</sup> Federal Communications Commission, *Ibid*, Pg. 59, Para. 92.

<sup>9</sup> Cisco, “Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010–2015,” February 1, 2011.

<[http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-520862.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.html)>

<sup>10</sup> Entner, Roger, “What is the price of a megabyte of wireless data?” *FierceWireless*. April 13, 2011.

<<http://www.fiercewireless.com/story/entner-what-price-megabyte-wireless-data/2011-04-13>>

<sup>11</sup> Malik, Om. “Broadband, Now Cheaper Than Ever,” *GigaOM*, February 1, 2011.

<<http://gigaom.com/broadband/broadband-now-cheaper-than-ever/>>

<sup>12</sup> Kellogg, Don. “Average U.S. Smartphone Data Usage Up 89% as Cost per MB Goes Down 46%,” *Nielsen*, June 17, 2011. <<http://blog.nielsen.com/nielsenwire/?p=28035>>

<sup>13</sup> Digital Liberty, “FCC Eyeing New Broadband Roaming Mandates?” April 6, 2011.

<<http://digitalliberty.net/fcc-eyeing-new-broadband-roaming-mandates-a50>>

often exceeds capacity. At the same time, the merger frees resources and leverages economies of scale to allow AT&T to speed up deployment of future 4G LTE infrastructure.

Acquiring T-Mobile's technology is poised to provide better competition for wireless broadband with Verizon, who is currently the largest carrier and is well into their LTE launch. In another example of true, non-metric competition in the market, in mid-June Verizon requested to swap a portion of their 700 MHz spectrum with U.S. Cellular's 1900 MHz spectrum in order to increase the quality and coverage of its network.<sup>14</sup> This decision follows the threat of competition from AT&T acquiring T-Mobile's spectrum. Both companies' decisions show a highly competitive wireless market where businesses constantly jostle to grow a customer base, reduce attrition rates, and ultimately improve service.

### **III. Merger Approval Should Not Be Bound by Regulatory Conditions – Extraneous, Unrelated, or Otherwise**

Competitors and merger opponents have proposed a host of conditions upon which the merger could be approved. These include voice and data roaming mandates, special access price controls, regulations on wholesale service offerings, handset and device exclusivity agreement bans, caps on spectrum holdings, interoperability requirements, and more. We urge the Commission to reject these and other conditions.

Placing regulatory burdens on a merged company creates clear burdens that are detrimental to true competition and innovation. Such conditions would pick business winners and one loser in the market, creating an unlevel playing field with other carriers. They could also serve as a precedent for future regulatory action against other carriers.

Government rules can severely incapacitate companies from adequately responding to

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<sup>14</sup> Trefis Team, "As AT&T Buys T-Mobile, Verizon Eyes Spectrum Swap To Improve Quality," *Forbes*, June 16, 2011. <<http://blogs.forbes.com/greatspeculations/2011/06/16/as-att-buys-t-mobile-verizon-eyes-spectrum-swap-to-improve-quality/>>

consumer demand. Conditions can often force companies to forgo providing services or offering goods that benefit consumers. For example, calls to ban handset and device exclusivity agreements consistently ignore the critically important role that carriers with larger amounts of capital have in bringing new and innovative products like smartphones to market. Carrier subsidies that are the underpinning of these agreements can be credited with lowering prices for consumers, mitigating financial risk for manufacturers to bring high-cost devices to market, and largely unleashing the wave of mobile computing.

Calls for spectrum caps or regulations on spectrum holdings are equally unfounded. Demand for wireless data on smartphones, computers, tablets, and other devices is growing at 250 percent per year and will require significantly more spectrum to deliver it.<sup>15</sup> Already, major carriers are facing capacity constraints, particularly in high-density, urban markets. These providers carry significantly more data-consuming devices and require a great deal more spectrum to deliver it. While the merger is poised to leverage T-Mobile spectrum, as devices become more data intensive, a cap on spectrum holdings can severely reduce future network and backhaul capacity.

Only the free-market is truly pro-consumer, as business decisions are driven by appeasing customers, and not the regulatory demands of competitors, special interest groups, or government agencies.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Kelly Cobb', with a stylized flourish at the end.

Kelly William Cobb  
Digital Liberty  
Americans for Tax Reform

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<sup>15</sup> Locke, Gary and Larry Summers. "America's Broadband Opportunity." *Wall Street Journal*, November 15, 2010. <<http://online.wsj.com/article/SB10001424052748703848204575608872054624914.html>>